IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6236 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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JAGDISH @ JAGO KANTIBHAI CHHARA

Versus

COMMISSIONER OF POLICE

Appearance:

MR CHETAN B RAVAL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/02/2000

ORAL JUDGEMENT

In this petition, the detenu has challenged the order of detention dated 4.6.1999 passed by the Commissioner of Police, Ahmedabad City, the respondent No. 1 herein, under the provisions contained in section 3 of the Gujarat Prevention of Anti-Social Activities, Act 1985 (hereinafter referred to as the Act).

2. Grounds of detention dated 4.6.1999, vide Annexure 'B' to the petition, has been served on the detenu. From the grounds, it appears that the detenu was engaged in the business of selling and transporting illicit liquor. Atleast two cases were registered against him by Special Branch (Prohibition squad) and one case is registered at Sabarmati Police Station. Apart from dealing in illicit liquor, the detenu was in the habit of beating innocent persons. It is also pointed out that he used to demand vehicle of anyone, and on denial, he used to go to the extend of beating the

persons. The grounds of detention also disclosed that the detenu has his associates were acting in such a way that people were feeling insecure. It is also stated in the grounds that if people gather at the scene the detenu and his accomplice used to frown upon them with dangerous weapons like knife.

3. In the present petition, this Court would not like to go into the legality of the order of detention passed by the respondent No.1. Suffice it to say that in the instant case, neither the detaining authority nor the State has filed affidavit pointing out that the detention order or the continued detention is just and proper. Therefore, the averments made in the petition by the detenu are not denied. The detenu has specifically contended in the petition that there is no material disclosing the procedure followed by the detaining authority after detaining the detenu. His case is that there is non-compliance with sections 11 and 12 of the Act. Section 11 reads as under:-

> "In every case where a detention order has been made under this Act the State Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 10 the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and where the order has been made by an authorised officer, also the report made by such officer under sub-section (3) of section 3."

4. In paragraph 14 of the petition, the detenu has made the following averments:-

> "The petitioner calls upon the respondents to state the date on which such a reference is made under section 11 of the Act and the date on which the report has been sent by the Advisory Board to the State Government, as provided under section 12 of the Act".

5. The above averments have remained uncontroverted. Therefore, it is not possible for the Court to say that within the time prescribed the State Government has placed before the Advisory Board the grounds of detention within the prescribed time. Thus, there is non-compliance of section 11 of the Act. In view of this, the continued detention of the detenu is held as bad and illegal for the reasons aforesaid. The detenu is

ordered to be released forthwith if not required in any other case. Rule made absolute accordingly. No order as to costs.

csm./ ----------